

CR No. 2020 of 2023

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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No. 2020 of 2023 (O&M)

Date of decision : 29.3.2023

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Devender Singh

.....Petitioner

vs.

Ramphal Kaushik and another

.....Respondents

Coram: Hon'ble Mr. Justice H. S. Madaan

Present: Mr. Rajesh Goyal, Advocate for the petitioner.

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H. S. Madaan, J.

Briefly stated, facts of the case are that, plaintiff – Ramphal Kaushik had brought a suit against defendants Devender Singh and Smt. Sumitra, seeking recovery of Rs.81 lacs alongwith interest and damages. On getting notice, the defendants appeared and contested the suit. Vide judgment dated 10.9.2019, passed by Additional Civil Judge (Senior Division), Ganaur, the suit filed by the plaintiff was decreed for recovery of 81 lacs with interest and costs.

After about 3 years of passing of judgment by the trial Court, the defendant Devender Singh had preferred an appeal. Since the appeal was filed beyond period of limitation, an application under Section 5 of the Limitation Act was filed for condonation of delay, notice of which was given to the plaintiff, who put in appearance and

contested the application. Vide impugned order dated 13.2.2023, the application for condonation of delay was dismissed. Resultantly, the appeal was also dismissed being time barred. The appellant has approached this Court by way of filing the present revision petition.

I have heard learned counsel for the revision petitioner – defendant, besides going through the record.

A perusal of the impugned order goes to show that in the application seeking condonation of delay, the reason mentioned was that the applicant had applied for certified copy of the impugned judgment and decree, but the same were received by him on 24.2.2019. Thereafter he got a paralytic attack, whereby one half of his body was paralyzed. Then there was lock-down on account of Covid pandemic and after recovering from the ailment, he had filed the appeal.

The Court of Additional District Judge, Sonapat, has dealt with all the three grounds in a proper and appropriate manner. With regard to late receipt of certified copy, in para No. 8 of the judgment, the learned Additional District Judge, has observed that the impugned judgment and decree were passed on 10.9.2019, whereas certified copy was received by him on 24.9.2019, but the certified copy attached with the appeal shows the date of application as 20.7.2022, prepared on 29.7.2022 and supplied on 30.7.2022. Therefore, contention of the applicant, that he had received copy of impugned judgment and decree on 24.9.2019 was not found to be factually

correct.

With regard to the 2nd ground that he had suffered a paralytic attack, no documentary proof in that regard was placed on record. Therefore, there is nothing to believe such plea taken by the applicant.

With regard to the 3rd ground of lock-down on account of Covid – 19 pandemic, the trial Court has rightly observed that the impugned judgment and decree had been passed on 10.9.2019, whereas restrictions were imposed in the 3rd week of March, 2020. In terms of Article 116 of the Limitation Act, 1963, limitation for filing an appeal to District Court is 30 days from the date of decree or order. That means, the limitation for filing the appeal had expired much prior to the coming into being the restrictions for Covid-19. It has been further observed, that there is a delay of total 1098 days in filing the appeal and even if the period of Covid -19 is excluded then also there is a delay of 383 days delay in filing the appeal.

Learned Additional District Judge, Sonapat, by giving detailed reasoning, has come to the conclusion that the applicant had failed to show sufficient cause for the delay in filing the appeal and rather he comes out to be guilty of negligence and inaction and has prepared a concocted story, in order to seek condonation of delay.

I do not see any reason to find myself in disagreement with learned Additional District Judge, Sonapat in that regard. Learned counsel for the revision petitioner has referred to judgments

Hemlata Verma vs. M/s ICICI Prudential Life Insurance Co. Ltd., and another 2019 (5) RCR (Civil) 504, Balkrishna Waman Zambare vs. Siddheshwar Shikshan Sanstha, Dongarsoni and others Law Finder Doc Id # 1584089 and Esha Bhattacharjee vs. Managing Committee of Raghunathpur Nafar Academy and others 2013 (12) SCC 649, in support of his contention that a liberal view with regard to condonation of delay should be taken by the Courts.

Though certainly, a liberal view in the matter should be taken, provided sufficient cause for not approaching the Court within the period of limitation is shown. The law does come to the rescue of a litigant who commits a mistake inadvertently and not intentionally. A person who is grossly negligent in not approaching the Court within the period of limitation, cannot be shown any indulgence or sympathy.

I do not find any illegality or infirmity with the impugned order. The same is without any element of arbitrariness or perversity. Thus there is no ground to interfere with such order by exercising the revisional jurisdiction by this Court.

The revision petition is found to be without any merit and is dismissed accordingly.

29.3.2023
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(H.S. Madaan)
Judge

Whether speaking / reasoned Yes / No

Whether reportable Yes / No