

2023:PHHC:105032

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

106

CWP-11156-2023

Date of Decision: 08.08.2023

DR. R.K. JAIN @ RAJESH KUMAR JAIN

... Petitioner

VERSUS

**THE REGISTRAR GENERAL HIGH COURT OF PUNJAB
AND HARYANA**

... Respondent

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Prince Goyal, Advocate (Legal Aid Counsel)
with the petitioner in person.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition has been filed under Article 226 read with Section 151 of the C.P.C. for issuance of directions to the Registry of this Court to list the petition filed by the petitioner as a Regular Second Appeal, instead of having been compelled to file Civil Revision bearing No.CR-1728 of 2021.

It has been argued that the petitioner, who is a Doctor by Profession had instituted a Civil Suit for recovery under Order 37 CPC before the Civil Court at Jind. The defendants therein chose not to appear before the Court concerned resulting in passing of an *ex-parte* judgment and decree dated 20.11.2017 in favour of the petitioner, whereby as against the demanded amount of Rs.3,52,230/-, only the principal amount of Rs.1,00,000/- was decreed alongwith interest @ 9% per annum.

Aggrieved thereof, the petitioner filed First Appeal before the District Judge, Jind alongwith an application for seeking condonation of delay in filing the said First Appeal. Even though it is not so stated in the present petition, however, it has been informed by learned counsel for the petitioner, on instructions from the petitioner, who is present in Court today, that the abovesaid First Appeal was filed after a delay of 24 days. An application under Section 5 of the Limitation Act, 1963 for seeking condonation of delay had also been filed by the petitioner.

The abovesaid application for seeking condonation of delay was dismissed by the Addl. District Judge, Jind vide order dated 19.07.2021. The petitioner approached this Court by filing a Regular Second Appeal initially bearing RSA No.26160 of 2021 dated 06.08.2021. An objection was raised by the Registry of this Court qua the maintainability of Regular Second Appeal and the petitioner was advised to file a Civil Revision Petition.

A Civil Revision Petition bearing CR No.1728 of 2021 was, thereafter filed by the petitioner on 25.08.2021. The abovesaid Civil Revision Petition was dismissed by the Single Judge of this High Court on 13.12.2022, whereafter, an SLP (Special Leave to Appeal) was also preferred by the petitioner, which was also dismissed by the Hon'ble Supreme Court in *limine* vide order dated 17.04.2023.

The petitioner has now filed the present writ petition for directing the Registrar General of this High Court to accept the Regular Second Appeal that was initially filed on 06.08.2021 vide Registration No.26160 of 2021 and to list the same as Regular Second Appeal, so that the First Appeal of the petitioner filed before the Addl. District Judge, Jind

bearing Civil Appeal No.215 of 2019 titled as 'Rajesh Kumar Jain Vs. Krishna Bahadur Sunar' is heard and decided on merits.

I have heard the counsel for the parties at length and have gone through the documents appended with the present petition.

The petitioner has not raised any challenge to the High Court Rules and Orders wherein the provision has been provided for filing of a Civil Revision against an order passed under Section 5 of the Limitation Act, 1963 declining to condone the delay. Moreover, the petitioner chose not to approach this Court raising any challenge to the objection raised by the Registry of this Court and/or seeking a direction that the Regular Second Appeal should be listed for hearing instead of directing the petitioner to file a Civil Revision at the relevant point of time. Rather, the petitioner proceeded to file the Civil Revision and lost the same. Having tested the said order passed in Civil Revision before the Hon'ble Supreme Court of India and having failed to find any success, the present writ petition has been filed for seeking reopening of an issue that already stands culminated by a decision of this Court in December 2021.

Even though it is contended by the petitioner that he was compelled at that point of time to file a Civil Revision Petition, however, no such compelling circumstances are apparently made out under which the petitioner had the compulsion of filing Civil Revision considering that it was a simplicitor suit for recovery of money and no life and liberty or grave urgency was involved at the relevant point of time.

The petitioner cannot, under the garb of the present writ petition, be permitted to seek reopening of an order that has already been passed in the

Civil Revision Petition and has attained finality. Validity of the said order has been affirmed by the Hon'ble Supreme Court as well.

The lis in this regard having been decided by a Single Bench, it would now not be permissible to direct relisting of a closed cause and by directing that the appeal of the petitioner be still entertained notwithstanding that the right of the petitioner has been foreclosed under the Limitation Act, 1963.

Finding no merit, the present petition is hereby dismissed in *limine*.

08.08.2023.
rajender

(VINOD S. BHARDWAJ)
JUDGE

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