

CR-2357-2023 (O&M)

117

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2357-2023 (O&M)

Date of decision: April 20, 2023

Jagmohan Singh

....Petitioner

versus

Sardool Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Amit Arora, Advocate for petitioner.

ARUN MONGA, J. (ORAL)

Petition herein is for setting aside impugned order dated 04.03.2023(Annexure P-5) passed by learned District Judge, Tarn Taran whereby application filed by respondents No.1 to 13-plaintiffs for condonation of delay of 748 days in filing first appeal was allowed, in an appeal filed against judgment/ decree dated 14.12.2015 (Annexure P-1) passed by learned Additional Civil Judge (Senior Division), Patti, District Tarn Taran.

2. The revision petition is premised on the averments that vide judgment/ decree dated 14.12.2015 (Annexure P-1), learned trial Court had dismissed the suit of plaintiffs-respondents No.1 to 13 seeking declaration to the effect that they are owners in possession of land in question. Aggrieved, respondents No.1 to 13 filed an appeal against aforesaid judgment/ decree. Along with the first appeal, an application (Annexure P-3) seeking condonation of delay of 748 days in filing the appeal was also filed. Vide impugned order dated 04.03.2023 (Annexure P-5), learned First Appellate Court allowed the aforesaid application and condoned the delay in filing first appeal.

3. I have heard learned counsel for parties and gone through the record.

4. Impugned order dated 04.03.2023(Annexure P-5) passed by learned District Judge, Tarn Taran, is premised, *inter alia*, on the following reasoning:

“16. The delay of 748 days in filing the present appeal is quite inordinate and, at the first glance, might seem to be un-condonable.

However, before adjudicating upon the question of delay viz-a-viz the conduct of the appellants-plaintiffs a brief reference to the judgment under assail is required to be made. There is reference in the judgment to mutation No. 1720 with reference to land situated in village Rasulpur having been given to appellants-plaintiffs at the time of disputed exchange. In para No. 11 of the judgment, the learned Trial Court has adverted to the submission of respondent-defendant Jagmohan Singh to the effect that appellants-plaintiffs should have filed the suit for possession of land situated in village Rasulpur given to them vide Mutation No.1720. In page No.20 of the judgment, learned Trial Court has referred to the plea of appellants-plaintiffs that mutation No.1720 is a forged and fabricated mutation and has been got sanctioned by respondent-defendant No.1 in connivance with revenue officials. The learned Trial Court, rejected the said plea of appellants-plaintiffs on ground that appellants-plaintiffs did not examine any Tehsildar or revenue authority to prove the factum of forgery and thus, inter alia, non-suited the appellants-plaintiffs.

17. The learned counsel for appellants-plaintiffs has hammered heavily on the point that appellants-plaintiffs, thereafter, approached the revenue officials for preparation of Musana Intkal No.1720 for reconstruction of Mutation No. 1720. However, after thorough inquiry, it was revealed that no such mutation was ever sanctioned. Appellants-plaintiffs have now examined Harjit Singh Sadar Kanungo, who has produced the file pertaining to request for Dummy/Musana mutation No.1720 dated 28.10.2005 of village Rasulpur and has proved the report of revenue officials, as well as that of Naib Tehsildar and SDM, Patti, as Ex.AW21/D to Ex.AW2/F, whereby it was reported that there is no record of mutation No. 1720 and that no such mutation was deposited with the office Kanungo regarding which the matter has now been recommended for enquiry. Thus, having failed in obtaining the dummy/Musana mutation No.1720, which was the plank on which respondent-defendant claim the mutation No.1973 of exchange in his favour to be valid, the appellants-plaintiffs then again knocked the door of Civil Court by filing the present appeal, thereby, seeking the setting aside of impugned judgment.

18. Undoubtedly, this is not the stage to go into the merits of the appeal. However, the nature of facts that have been brought to the notice of the Court require further re-look into the entire matter. This is not a run of the mill case but a case in which certain disturbing facts, about the procedure followed by revenue authorities at the time of sanctioning the mutation, in question, in favour of respondent-defendant No.1. have come up. Substantive justice would only be done, if, the new facts, regarding the doubtful existence of Mutation No.1720, are clarified and the things are taken to their logical end. As held by Hon'ble Apex Court in case Chandan Singh Vs. National Insurance Co. Ltd. 2015(2) Civil Court Cases 248 that Courts and Tribunals are required to examine the case of litigants on merits and not to reject the case at the threshold on technicalities i.e., on the ground of delay. Likewise Hon'ble Punjab and Haryana High Court, in the case Saroj Vs. Baljeet Singh 2010(4) Civil Court Cases 532 has held that where the case is good on merits, the same constitutes sufficient case for condonation of delay and that meritorious matters are not to be dismissed at the threshold.

19. In this backdrop, therefore, this Court is of the considered opinion that the entire matter requires keen probe so as to unearth the truth surrounding the sanctioning of mutation in favour of respondent-

CR-2357-2023 (O&M)

defendant and the non-existence of mutation in favour of appellants-plaintiffs. The Court cannot hide behind the veneer of technicality and reject the prayer of appellants-plaintiffs for re-hearing the case, on the ground of technicalities.

20. Thus, in the light of the peculiar circumstances surrounding the dispute in the present case, the appeal is required to be heard on merits. Issue No. 1 is, therefore, held in favour of appellants-plaintiff.”

5. Learned counsel for petitioner would vehemently argue that even the witnesses appearing from the revenue office having clearly deposed that though application for seeking correction/amendment of mutation in question was dated 02.02.2016, but as per the receipt diary in the revenue office, the same was submitted sometime in December-2016 and thus, having caused delay of 10 months on its own volition were not entitled to be given benefit of condonation of delay in filing appeal. Furthermore, he would argue that even the main suit which was dismissed against the plaintiffs was also on the ground of having belatedly approached learned trial Court for correction in the mutations as the same was found to be barred by limitation. He would submit that any correction in the mutation record has to be within 3 years of the knowledge thereof, whereas, suit was filed after 5 years and is clearly barred by limitation. He relies on the Supreme Court judgment rendered in **Brijesh Kumar and others versus State of Haryana and others**, reported in **2014 AIR (Supreme Court) 1612** and judgment of this Court rendered in **Smt. Tara Wanti versus State of Haryana**, reported in **1995 (1) R.R.R. 110**.

6. On both counts, I am unable to persuade myself to accept arguments canvassed before me. For the purpose of condonation of delay, the Court is required to see whether there was any sufficient cause in approaching the Appellate Court and *qua* the same, learned Appellate Court has conducted an elaborate inquiry by summoning witnesses from the revenue authorities as well as examining the witnesses of respondents No.1 to 13. It is only after framing an issue, inquiring into the matter threadbare that cogent findings have been rendered by the learned District Judge *qua* sufficient cause having been shown.

CR-2357-2023 (O&M)

7. That apart, it transpires that respondents No.1 to 13 are illiterate farmers belonging to Scheduled Caste and are ill-equipped with legal niceties. In case, they were advised at the relevant time to seek their remedy before the revenue officials *qua* which sufficient material has come on record, indeed steps for the same were taken. To indulge into hair-splitting on certain delays having been caused would be unfair. After preparing original application on 23.02.2016, then filing the appeal on 10.01.2018 also seems justifiable as in the meantime, respondents No.1 to 13 may have been running from pillar to post to seek appropriate legal advice *qua* their remedies. No doubt, in the application seeking condonation of delay, the recitals about their attempts to seek remedy before revenue officials are not happily worded inasmuch as it is stated that they were “trying their luck before revenue officials” perhaps what they actually ought to have stated that they were making endeavours to seek their remedy before revenue officials. Such words having been used by learned counsel to draft application cannot therefore, result in any premium being given to petitioner and are clearly not the fault of respondents No.1 to 13.

8. In the parting, I may also hasten to add that proposition of law canvassed by learned counsel for petitioner that condonation of delay ought not to be dealt with lightly since seeking remedy barred by limitation results crystallization of rights in litigants and those rights cannot be taken away casually. However, what is to be seen is not just the crystallization of rights owing to delay in seeking remedy, but what is to be seen if overall conduct of litigant shows his acquiescence or deliberate omission had led to a situation resulting in crystallization of the opponent's rights. In the present case, it has been rightly noted by learned First Appellate Court below that all throughout, respondents No.1 to 13 were pursuing their remedies before revenue officials though, of-course there was delay in pursuing the same and therefore, rightly returned findings that there is sufficient cause in condoning the delay.

8.1. The judgments relied by learned counsel for petitioner are not applicable in the present case as the import of the same also clearly reflects that sufficient cause

CR-2357-2023 (O&M)

is a condition precedent for exercising the discretion of Court for condonation of delay which, as already noted herein above, learned Appellate Court has conducted threadbare trial in arriving at conclusion of sufficiency of cause.

9. In my opinion, there is no room for interference in the aforesaid valid reasons recorded by learned Appellate Court for condonation of delay in filing the first appeal.

10. No material irregularity in law or procedure has been committed by learned Appellate Court, so as to exercise extraordinary revisional jurisdiction herein.

11. Dismissed.

12. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

April 20, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No