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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-8298-2023

Date of decision: 21.04.2023

GURDIAL SINGH

...Petitioner

Versus

STATE OF PUNJAB AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Sukhdev Singh Khokhar, Advocate
for the petitioner.

Ms. Monika Jalota, Sr. DAG, Punjab

SURESHWAR THAKUR, J. (ORAL)

1. The petitioner suffered a decree of eviction on the petition of Gram Panchayat Bakarpur, Tehsil and District Kapurthala. The said decree of eviction was made upon case No.611/ADC, on 28.07.1995. One of the respondents impleaded therein was the instant petitioner.

2. Apparently, the above decree of eviction was made on 28.07.1995. Subsequent thereto, it is stated at the bar, by the learned counsel for the petitioner, that the petitioner has been elected as a Panch of the Gram Panchayat Bakarpur. Therefore, in case the decree is permitted to stand, thereupon it would have a stigmatizing effect, upon, his office as a panch. Furthermore, he also submits that a petition for his being removed from the office of Panch, is *subjudice*, before the Competent Authority concerned.

3. The grievance raised by the instant writ petitioner, is that, he may be facilitated to seek postponing of an adjudication being made, upon the said

petition, but only when the apposite appeal, which is raised by him, but belatedly in the year 2019, is permitted to be taken on record, whereas its being dismissed, but on the ground that the same is barred by limitation, thus, he would be defacilitated to ask for any relief for the postponement of an adjudication being made, upon, the above *subjudice* petition (supra), before the Competent Authority concerned. He advances the reason, that in case his application for condonation of delay, for his belatedly instituting, an appeal against Annexure P-1, rather is allowed, thereupon he may yet ably ask for an adjournment, from the Authority concerned, wherebefore whom the above petition, is *subjudice*, but upto, a conclusive adjudication being made on the relevant statutory appeal.

4. It appears that as a matter of fact the decision, as, made on 28.07.1995, upon case (supra), has but apparently remained unappealed rather within the prescribed period of limitation hence for a valid appeal being reared thereagainst, before the Competent Appellate Authority concerned. The said appeal as reared in the year 2019, is but belatedly raised before the Competent Appellate Authority. Thus, through a decision made thereons, and, as enclosed in Annexure P-4, the espoused therein relief became declined to the present petitioner.

5. Without commenting upon the merits of the conjoint decision, as, made on the appeal and also on the appended therewith application, as, cast under Section 5 of the Limitation Act (hereinafter referred to as “the Act”), the visible fact, that the learned Appellate Authority concerned, without asking for a reply to the petition being filed, on behalf of the respondents concerned, and, obviously without completing pleadings on the application under Section 5 of the Act. Moreover, visibly without its, striking issues, on the relevant pleadings, and, thereafter permitting the applicants to adduce evidence, on the said struck issue, rather it has in a hurried, and, slip shod manner, come to a conclusion, that

with the prolonged period of delay in the institution of a valid appeal, against Annexure P-1 rather remained unexplained, thus defacilitated the appellant to file an able appeal to challenge the verdict of 28.07.1995. The declining of the asked for prayer, but *prima-facie* could be construed to be valid, but only upon the above exercises being imperatively done, at the instance of the Appellate Court concerned. Contrarily, when the above stated procedural compliances, as were required to be made, at the instance of the Competent Appellate Authority concerned, rather became not made. Thus, the perfunctory manner of dismissing of the application, cast under Section 5 of the Act, cannot become vindicated by this Court.

6. In sequel, after quashing Annexure P-4, the lis is remanded to the Competent Appellate Authority concerned, to after asking for completion of pleadings in the application cast, under Section 5 of the Act, to strike thereons the relevant issues, and, thereafter permit the applicant, and, the non-applicant, to adduce their respective evidence(s) thereons. Subsequently, a fresh decision in accordance with law, be made on the said application, but within 6 months from today, and, also after hearing all affected parties concerned. Till a final adjudication is made upon the statutory appeal, thereupto it is but expected from the Competent Authority wherebefore whom, the above petition is *subjudice*, to grant the asked for adjournment(s) to the petitioner.

(SURESHWAR THAKUR)
JUDGE

21.04.2023

Ithlesh

(KULDEEP TIWARI)
JUDGE

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